newspaper report was inaccurate or compiled without due care and attention; nor is there anything in the circumstances of the matter to rebut the presumption of good faith.

In my opinion no injustice has resulted from the action of the learned District Judge in acquitting the accused without calling upon their defence, in that it would seem that he appears to have formed the view, with which I am not disposed to disagree, that the record of the prosecution case itself discloses a situation from which it may reasonably be inferred that the relevant exceptions to section 499 of the Penal Code are applicable.

The appeal must therefore be dismissed and the order of acquittal affirmed.

Appeal dismissed.

Solicitors: *Drew & Napier; Sisson & Delay.*

SURINDER SINGH KANDA v. THE GOVERNMENT OF THE FEDERATION OF MALAYA

[O. C. J. (Rigby J.) March 24, 1960]

[Penang — Civil Suit No. 232 of 1959]

Constitutional Law — Constitution of the Federation of Malaya, arts. 135(1), 144(1) and 162(1) — Police Service Commission.

Police — Superior Police Officer — Dismissal by Commissioner — Whether power of Commissioner under Police Ordinance, 1952 impliedly repealed by art. 144 of the Federation Constitution.

Legislation — "Modification" — Repeal by implication — Federation Constitution, Art. 162(1), (6) and (7).

The plaintiff claimed a declaration that his dismissal from the Federation of Malaya Police Force purported to be effected by the Commissioner of Police on July 7, 1958, was void, inoperative and of no effect and that he was still a member of the said Police Force. He further asked for orders directing that an account be taken of the salary and emoluments due to him as from the date of his allegedly invalid dismissal and the payment to him of the amounts found to be due.

The plaintiff based his claim on two grounds: (1) by virtue of the Federation Constitution the powers of appointment and dismissal of Superior Police Officers were no longer vested in the Commissioner of Police but had become vested in the Police Service Commission; (2) even if the power of dismissal was still vested in the Commissioner of Police his dismissal was invalid in that he was deprived of the fundamental right of being given a reasonable opportunity of being heard before the order of dismissal was made against him.

Held: (1) the words "Subject to the provisions of any existing law and to the provisions of this Constitution" in Art. 144(1) of the Federation Constitution repeal the powers previously vested in the Commissioner of Police under the Police Ordinance, 1952, "to appoint, confirm, promote and dismiss superior police officers" and place such powers in the hands of the Police Service Commission. At the time of the plaintiff's dismissal, the power to appoint and dismiss was vested in the Police Service Commission by virtue of Art. 144(1) (read in conjunction with Art. 135(1)) of the Constitution.

(2) by virtue of Article 135(2) of the Constitution the plaintiff could not be dismissed without being given a reasonable opportunity of being heard;

(3) the Court had jurisdiction to entertain these proceedings in the present form, i.e. to grant the plaintiff the order of declaration asked for;

(4) accordingly there must be a declaration for the plaintiff in the terms as prayed, and an account must be taken of the moneys due to the plaintiff in respect of his salary and all other emoluments found to be due to him as an Inspector of the Federation of Malaya Police Force as from July 7, 1958.

Cases referred to:—

(1) *High Commissioner for India* v. *I. M. Lall* A.I.R. 1948 (35) P.C. 121.

(2) *R.* v. *Queen's County J.J.* [1908] 2 Ir. R. 285 at 294.

(3) *N.W.F. Province* v. *Suraj Narain* A.I.R. 1949 (36) P.C. 113.

(4) *Cooper* v. *Wilson* [1937] 2 K.B. 309.

(5) *Bernard & Ors.* v. *National Dock Labour Board & Anor.* [1953] 1 All E.R. 1113.

(6) *Healey* v. *Minister of Health* [1955] 1 Q.B. 221.

ACTION.

Mr. Jag-Jit Singh for plaintiff.

Mr. L. A. Massie (Senior Federal Counsel) for defendants.

Rigby J.: In this action the plaintiff claims a declaration that his dismissal from the Federation of Malaya Police Force purported to be effected by one, Mr. W. L. R. Carbonell, the then Commissioner of Police of the Federation of Malaya, on the 7th day of July, 1958, was void, inoperative and of no effect and that he is still a member of the said Police Force. He further asks for orders directing that an account be taken of the salary and emoluments due to him as from the date of his allegedly invalid dismissal and the payment to him of the amounts found to be due.

2. The plaintiff bases his claim on two grounds, one a matter of law, and the other of mixed law and fact. First, he contended that, as a matter of law, by virtue of the Federal Constitution which became the supreme law of the Federation of Malaya as from the 31st day of August, 1957, the powers of appointment and dismissal of Superior Police Officers were no longer vested in the Commissioner of Police but had become vested in the Police Service Commission. Secondly, he contended that even if the power of dismissal was still vested in the Commissioner of Police his dismissal was invalid in that he was deprived of the fundamental right of being given a reasonable opportunity of being heard before the order of dismissal was made against him. It will be convenient to deal with these two submissions in the order in which they have been raised.

3. The plaintiff joined the Federation of Malaya Police Force on the 1st day of March, 1951, as a Probationary Asian Inspector. On the 31st day of August, 1951, by a Certificate of Appointment, he was appointed a Superior Police Officer in the rank of Probationary Inspector. On the 1st day of June, 1953, he was confirmed in the substantive rank of Police Inspector and placed on the pensionable establishment. On the 7th day of July, 1958, for reasons to which I will later have to refer, the then Commissioner of Police ordered his dismissal from the Police Force.

4. Section 9 of the Police Ordinance, 1952, empowered the Commissioner of Police to appoint a Superior Police Officer, and section 45(1) of the Ordinance, read in conjunction with the First Schedule thereto, empowered him, subject to Police Regulations, to dismiss a Superior Police Officer. It was conceded on behalf of the plaintiff that if in fact those statutory provisions were still operative on the 7th day of July, 1958, then the order of dismissal was valid. But it was contended that those provisions had been impliedly repealed by Articles contained in the Federal Constitution and in the following manner.

Part X of the Constitution deals comprehensively with the Public Services and provides for the appointment and constitution of various Service Commissions to deal respectively with the different branches of the Public Services, including the Police Service.

Article 144(1) enacts that:—

"144. (1) Subject to the provisions of any existing law and to the provisions of this Constitution, it shall be the duty of a Commissioner to which this Part applies to appoint, confirm, emplace on the permanent or pensionable establishment, promote, transfer and exercise disciplinary control over members of the service or services to which its jurisdiction extends."

Article 144(7) makes it clear that "transfer" within the meaning of Article 144(1) does not include "transfer without change of rank within a department of government".

The argument put forward on behalf of the plaintiff is that by virtue of the provisions of Article 144(1) the powers previously vested in the Commissioner of Police "to appoint, confirm, emplace on the permanent or pensionable establishment, promote, transfer and exercise disciplinary control" have been transferred to the Police Service Commission. Reference is then made to Article 135(1) which provides that:—

"No member of any of the Services . . . . shall be dismissed or reduced in rank by an authority subordinate to that which, at the time of the dismissal or reduction, has power to appoint a member of that Service of equal rank".

It is contended that by virtue of Article 144(1), at the time of the plaintiff's dismissal the only authority empowered to appoint an officer of his rank was the Police Service Commission and, therefore, having regard to the provisions of Article 144(1), read in conjunction with Article 135(1), such dismissal could only be ordered by the Police Service Commission.

It is indisputable that the Police Ordinance, 1952, which gave the Commissioner of Police full powers of appointment and dismissal of Superior Police Officers, was "existing law" at the time the Constitution came into force. But it is argued that the words "subject to the provisions of any existing law and to the provisions of this Constitution" (the underlining is mine) must be read as a whole, and that the whole purpose and effect of Part X of the Constitution was to entrench within its provisions the security of tenure of persons in the Public Services and to place the control thereof, in so far as it related to powers of appointment, promotion and dismissal, in the various Commissions specifically appointed and entrusted with such functions. I find myself in complete agreement with that argument. Article 162(1) provides that:—

"Subject to the following provisions of this Article and Article 163, the existing laws shall, until repealed by the authority having power to do so under this Constitution, continue in force on and after Merdeka Day, with such modifications as may be made therein under this Article (the underlining is mine) and subject to any amendments made by federal or State law".

"Modification" is defined in Article 162(7) as including "amendment, adaptation and repeal".

It is true that the relevant sections of the Police Ordinance vesting powers of appointment and dismissal of Superior Police Officers in the Commissioner of Police have not been specifically amended by legislation. But Article 162(6) provides that:—

"Any court or tribunal applying the provision of any existing law which has not been modified on or after Merdeka Day under this Article or otherwise may apply it with such modifications as may be necessary to bring it into accord with the provisions of this Constitution". (the underlining is mine).

In my view, bearing in mind what I conceive to be the purport and intent of the provisions of Part X of the Constitution, the previously existing statutory powers of the Commissioner of Police to appoint, confirm, promote, and dismiss Superior Police Officers were impliedly revoked by Article 144, which places such powers in the hands of the Police Service Commission and, to that extent, the relevant Sections of the Police Ordinance conferring these powers upon the Commissioner of Police must be regarded as "modified", that is to say, repealed.

A number of authorities were cited to me by Mr. Jag-Jit Singh, who argued the case most ably on behalf of the plaintiff, on the subject of repeal by implication by subsequent legislation. I do not, however, think it necessary to refer to any of those authorities.

Having arrived at this conclusion on the law, it is not without interest to observe that the evidence adduced by the defendants themselves establishes that all appointments of Superior Police Officers since Merdeka Day have, in fact, been made by the Police Service Commission. The explanation put forward for this fact was the somewhat remarkable one, that the Police Service Commission was acting on behalf of the Commissioner of Police. I find such an explanation wholly untenable.

Whilst it might well seem inconvenient that administrative powers involving the appointment, promotion and dismissal of Superior Police Officers should vest in the Police Service Commission rather than in the Commissioner of Police, the remedy for this situation would soon to lie in the application of Article 144(6) of the Constitution which enables a Commission to delegate any of its functions to any officer or board of officers appointed by it. But it was at

no time suggested that the Police Service Commission had ever delegated any of its powers to the Commissioner of Police. On the contrary, as I have said, the argument advanced was the somewhat curious one, that by way of some unexplained administrative arrangement the Police Service Commission acted on behalf of the Commissioner of Police.

In my view, on a construction of Article 144(1), read in conjunction with Article 135(1) of the Federal Constitution, at the time of his dismissal, the power to appoint — and consequently the power to dismiss — the plaintiff was vested in the Police Service Commission, and the Commissioner of Police, as an authority subordinate to the Police Service Commission, had no power to dismiss him. I should, perhaps, add that the fact that the Commissioner of Police is an authority subordinate to the Police Service Commission is expressly admitted by the defendants in their pleadings. It follows that, in my view, the plaintiff's purported dismissal by the then Commissioner of Police on the 7th day of July, 1958, was void and inoperative, and he is accordingly entitled to the declaration and consequential orders which he seeks in his Statement of Claim.

5. Since this case may well go to another Court I think it both desirable and necessary that I should consider and deal with the alternative ground on which the plaintiff bases his claim, namely, that even assuming the Commissioner of Police had the power to dismiss him, such dismissal was contrary to natural justice and in breach of the Constitution in that he was not afforded a reasonable opportunity of being heard before the order of dismissal against him was made. Article 135(2) of the Constitution specifically provides that no member of the Public Services shall be dismissed or reduced in rank "without being given a reasonable opportunity of being heard". The argument on this ground of the plaintiff's claim involves some consideration of the facts leading up to the plaintiff's dismissal.

6. In September, 1957, two persons were tried before me in the Supreme Court, Penang, on charges involving possession of forged lottery tickets, contrary to section 474 of the Penal Code. The 1st accused was charged with the substantive offence, and the 2nd accused with abetting the commission of that offence. The case for the prosecution rested substantially upon the testimony of two Police informers of a thoroughly dubious character, one of whom was a rogue and confidence trickster with a number of previous convictions, and both of whom undoubtedly committed perjury in the proceedings before the Court.

The allegation was that the 1st accused had given forged lottery tickets to one of the informers and offered to supply more if he could find a suitable purchaser. The matter was reported to the Police and a trap was arranged, with a Police Detective Sergeant posing as the willing purchaser. Both the Police informers conducted the 1st accused to a hotel. In a room at the hotel the 1st accused was introduced to the intending purchaser. Forged lottery tickets were produced and the trap duly sprung. The question for consideration virtually turned upon whether this was a genuine trap or, as alleged by the defence, a deliberate frame-up on the part of the two Police informers who had given false information to the Police for some nefarious purpose to suit their own ends. The case against the 2nd accused was considerably weaker. It consisted of two pieces of evidence. First, the evidence of one of the informers that when he met the 1st accused by arrangement in the street before proceeding to the hotel he saw a man, whom he identified as the 2nd accused, come up to the 1st accused and hand over to him a parcel subsequently found to contain the forged lottery tickets. The second piece of evidence was, perhaps, of even more dubious value. After the 1st accused had been arrested in the hotel after allegedly handing over the forged lottery tickets, he allegedly made a statement. As a result of that statement he was taken the following morning to a particular café. The purpose of taking him to the café was that he could there hand over the proceeds of the money, which he was supposed to have received for the sale of the forged lottery tickets, to the actual supplier of those tickets. While sitting in the café the 2nd accused was seen to pass by on a bicycle. The 1st accused called to him by name and the 2nd accused then came and sat down at the same table. He was then immediately arrested. The evidence went no further than that. The jury returned a unanimous verdict of not guilty against the 2nd accused and a majority verdict (5 to 2) of not guilty against the 1st accused.

During the course of the trial both informers swore positively that they were acting entirely independently of one another and that neither of them know that the other was working in conjunction with the Police. One of them went so far as to say that when he conducted the 1st accused to the hotel to meet the prospective buyer of the forged lottery tickets he had no idea that a trap had been arranged. Yet both of them had given information to the Police and both of them were actively assisting the Police. It was clear that their evidence in this respect was palpably and deliberately untrue. Unfortunately, it was equally clear during the trial that at least two other Police Officers had deliberately given false evidence. One of them, when recalled and examined by the Court, finally admitted that he had given false evidence. This Police Officer was subsequently prosecuted and pleaded guilty to that charge. On this extremely serious charge of perjury committed by a Senior Police Officer in the High Court the then President of the Sessions Court, Mr. B. J. Jennings, made what I can only describe as the wholly remarkable order of conditionally discharging the accused, without any conviction being recorded, on a bond of good behaviour for a period of two years. He still remains a member of the Police Force. Called as a witness

to give evidence as to the good character of this perjured Police Officer was an Assistant Superintendent of Police (since promoted to act as Deputy Superintendent of Police) — a witness who had himself committed perjury in the course of the same proceedings, but against whom no criminal proceedings were instituted. (See the letter marked "DE. 11" included in the Report of the Board of Inquiry marked Ex. D. 15, and paragraph 56 of the Findings of that Board). A further prosecution for perjury was brought against another Police witness, a detective sergeant, but this prosecution was for some reason withdrawn.

7. As a result of the failure of the prosecution to secure a conviction in the forged lottery tickets case a Board of Inquiry was convened by order of the then Commissioner of Police. The Board of Inquiry was presided over by Mr. D. W. Yates, who was then Acting Senior Assistant Commissioner, C.I.D. Headquarters, Kuala Lumpur. The Board sat for a number of days during December, 1957, and January, 1958, and recorded the unsworn statements of 18 witnesses, including the plaintiff, the two Police informers, and the Police witnesses who had given evidence for the prosecution in the High Court Criminal Trial. The Board produced a most careful and exhaustive Report of its findings in which it dealt with the part played by each Police Officer who had had anything to do with the case.

At the time of the prosecution of the case the plaintiff was, among other things, Officer i/c Special Crime Branch. In that capacity, it is apparent that he played an active part in the initial stages of the case leading up to, and including, the laying of the trap whereby the 1st accused was to offer the forged lottery tickets to the prospective purchaser, who was, in reality, a Police Officer. Subsequently he became Officer in charge of the investigation of the case. He appeared on the scene immediately after the trap was sprung and it was he who arrested the 1st accused and subsequently spent a considerable time into the early hours of the morning interrogating him and taking a statement from him. He was concerned in the trap laid to catch the 2nd accused in the café the following morning, and it was to him the 2nd accused was brought for interrogation after his arrest. Subsequently he accompanied the 2nd accused to Kuala Lumpur on a visit to find out the source of the forged lottery tickets. The visit proved fruitless because, so it is said, the 2nd accused turned "hostile" and refused to give any further information.

In its findings the Board of Inquiry stated that they were "unanimously of the opinion that Police Inspector Kanda is the 'villain of the piece' ". The Board found not only that Inspector Kanda had suborned the Police witnesses with the object of simplifying and short-circuiting certain evidence, but also that he had suborned the two Police informers with the very much more sinister motive "dishonestly to strengthen the case against both accused in order to ensure a conviction in Court". In paragraph 72 of its Report the Board stated that they were "forced to the conclusion that Inspector Kanda is a very ambitious and a thoroughly unscrupulous Officer who is prepared to go to *any* lengths, including the fabrication of false evidence, to add to his reputation as a successful investigator. The Board could not help wondering how many of his previous successful cases had been achieved by similar methods.

8. Now, the Board was composed of three Senior Police Officers all of considerable experience. Their Findings were based upon the testimony of witnesses who gave evidence before them. They had the fullest opportunity to form their impressions as to the credibility of these witnesses, whether or not they were lying, and the weight to be attached to their statements. I have already said, and I repeat it, that it was a most careful and exhaustive Report. It would be entirely presumptuous for me to criticise or disagree in any way with its Findings; nor have I the slightest intention to do so. Assuming the Findings of the Board to be correct, not only was the Plaintiff a thoroughly unscrupulous scoundrel wholly unfit to be a Police Officer, but he was also guilty of the serious criminal charges of subornation of perjury and fabricating evidence with intent to secure a conviction of an offence punishable with imprisonment. The difficulty, of course, that the prosecution would have had to face if criminal charges had been brought against the plaintiff was that it would have had to rely for its success upon the evidence of witnesses — Police witnesses and informers — who had themselves admittedly committed perjury even though — as alleged — such perjury was committed at the instance of the plaintiff himself. The success of a prosecution on such evidence is necessarily open to doubt.

9. As a result of the Findings of the Board disciplinary charges were preferred against the plaintiff. Upon the instructions of the Deputy Commissioner of Police, Mr. H. W. Strathairn was appointed as Adjudicating Officer to hear those charges. A letter dated the 12th day of March, 1958, (Exhibit P. 18) written and signed by Mr. D. W. Yates was sent to Mr. Strathairn enclosing the specimen charges drafted by Mr. Yates which, it was suggested, should be preferred against the plaintiff and indicating briefly the witnesses that should be called in support of those charges. Enclosed with the letter was a copy of the Findings of the Board of Inquiry.

The nature and particulars of the charges actually preferred against the plaintiff are set out in paragraph 4 of the Statement of Claim and I do not propose to re-state them here. Looking at those disciplinary charges as they stand I think it not unfair to say that they seem to bear little relation to the extremely serious Findings of the Board, that the plaintiff had deliberately suborned witnesses to commit perjury and to fabricate false evidence in support of serious

criminal charges against two members of the public. The seriousness of the allegations against the Plaintiff is fully emphasised in the draft charges prepared by Mr. Yates and it seems to me unfortunate that those charges as drafted were not persisted in against the plaintiff rather than the preferment of the disciplinary charges, relatively trivial on the face of them, upon which he was, in fact, tried. It may well be that the explanation lies in the fact that it may have been considered that the specimen charges as framed by Mr. Yates were bad for multiplicity within the meaning of Regulation 3(2) of the Police Regulations, whereas it was considered, rightly or wrongly, that the various allegations made against him as set out in the particulars of the new charges might properly be said to arise out of the same transaction, namely, a failure to disclose certain items of evidence when performing his duties as a Police Inspector in preparing his investigation paper in relation to the charges of possession of forged lottery tickets against the two accused. The fact remains, however, that, on the face of them, the disciplinary charges actually preferred against the plaintiff bore little relation to the extremely serious Findings of the Board of Inquiry.

10. Disciplinary proceedings against the plaintiff commenced on the 16th day of April, 1958, and concluded on the 10th day of May, 1958. They consisted of the original charge and an alternative charge arising out of the same facts. Immediately before the hearing, a further disciplinary charge of a somewhat minor nature was handed to the plaintiff. The plaintiff objected to the original and alternative charges on the ground that the charges were bad for multiplicity in the sense that, contrary to Regulation 3(2) of the Police Regulations, they alleged the commission of more than one offence and that they should, therefore, be the subject of separate and distinct charges. He further objected to the additional charge and asked for an adjournment to prepare his defence to this charge. His objection was summarily overruled by the Adjudicating Officer. The trial proceeded and concluded on the 10th day of May, 1958.

11. On the 10th day of May, 1958, the plaintiff was brought before Mr. Strathairn, who informed him that he had found the charge against him proved. He was asked if he had anything to say and he made a short plea in mitigation. There has been some conflict of evidence, and considerable argument, as to which charge — whether the original or the additional charge — it was upon which Mr. Strathairn convicted the plaintiff, and to which charge he accordingly made his plea in mitigation. The plaintiff said that at the proceedings on the 10th May Mr. Strathairn informed him that he reserved judgment on the 1st charge, but convicted him on the additional (and relatively minor) charge, and that it was in respect of his conviction upon the additional charge that he made his plea in mitigation.

The importance to be attached to this particular piece of evidence lies in the argument put forward by Mr. Jag-Jit Singh. It was upon the 1st charge that the Adjudicating Officer purported to convict the plaintiff and made his recommendation for dismissal, a recommendation which the Commissioner of Police subsequently confirmed. Mr. Jag-Jit Singh's argument was that by virtue of Article 135(2) of the Constitution the plaintiff could not be dismissed without being given a reasonable opportunity of being heard. He contended on the authority of Indian cases that he cited that the words "a reasonable opportunity of being heard" include an opportunity of being heard both before conviction and again before sentence. He contended, therefore, that if in fact the plaintiff was not notified on the 10th May of his conviction on the 1st charge, but only on the additional charge, then he had been given no opportunity of being heard before the sentence of dismissal was made against him and such sentence was, therefore, invalid. I accept that argument as correct. But having heard the evidence of Mr. Strathairn and considered the document, Exhibit D. 4, (copy at A. 377), which purports to be part of the record of the proceedings at the time, — and which I accept as such — I am quite satisfied that the Adjudicating Officer informed the plaintiff that he convicted him on the 1st charge, and that the plea in mitigation — recorded on Exhibit D. 4 — was made by the plaintiff in answer to that charge. I also accept the evidence of Mr. Strathairn that, although he did not expressly inform the plaintiff that he proposed to recommend his dismissal, he made it abundantly clear to him that that, in fact, was what he intended to do, by informing him that he proposed to forward the case to be dealt with by the Commissioner of Police, since he did not consider that any action he might be empowered to take would be fitting in such a serious case. The plaintiff is an extremely shrewd, intelligent person. I have no doubt whatsoever that he knew perfectly well at that time that under the First Schedule to the Police Ordinance the only punishment which Mr. Strathairn, as Adjudicating Officer, was not empowered to award was dismissal. That punishment could only be awarded by the Commissioner of Police. The only possible reason, therefore, that Mr. Strathairn could have in forwarding the case to be dealt with by the Commissioner of Police was because he intended to recommend that the appropriate punishment was dismissal.

12. On the 16th day of May, 1958, the plaintiff wrote to the Commissioner of Police (letter at A. 70), appealing against the conviction and sentence. In the course of that letter he referred to the fact that on the 1st charge judgment against him had been reserved and on the 2nd charge he had been awarded a severe reprimand. He received no reply to, or acknowledgment of, that letter. In paragraph 4 of the Statement of Defence the remarkable explanation is put forward that "no acknowledgment or reply was sent

to the plaintiff for the reason that Regulation 15(1) of the Police Regulations, 1952, at that time provided that an appeal shall be sent to the Chief Secretary and not to the Commissioner in respect of a Superior Police Officer who has been awarded dismissal or reduction in rank". One might, perhaps, have thought that a Police Officer, dismissed from service, might have been afforded the elementary courtesy of a reply to his letter and a brief statement as to the correct procedure to be followed by him if he wished to lodge an appeal.

13. On the 23rd day of May, 1958, Mr. Strathairn forwarded the records of the two charges to the Commissioner of Police, together with his recommendation for dismissal on the original charge and his award of a severe reprimand on the additional charge. The letter also contains his detailed comments on the credibility of the witnesses he had heard. (See A. 362 - 364).

On the 5th day of June, 1958, Mr. Yates, acting on behalf of the Deputy Commissioner of Police, replied to Mr. Strathairn's letter, enclosing his own written comments — approved by the Deputy Commissioner of Police — on the disciplinary proceedings held by Mr. Strathairn. As a direct consequence of Mr. Yates's comments — and upon the instructions of the Deputy Commissioner of Police — Mr. Strathairn, as Adjudicating Officer, re-opened the proceedings for the purpose of hearing and recording the evidence of the two accused persons in the forged lottery tickets case and for the production and inclusion of their original statements to the Board of Inquiry. Copies of those original statements were furnished to the plaintiff before the hearing. He was present at the resumed hearing when the evidence of the two witnesses was taken and had ample opportunity to cross-examine, and did, in fact, cross-examine, them. The additional evidence was returned to the Commissioner of Police.

On the 27th day of June, 1958, the Commissioner of Police formally approved the recommendation for dismissal of the plaintiff made by the Adjudicating Officer, (see A. 132) following upon his conviction upon the original charge. On the 7th day of July, 1958, that order of dismissal was formally notified to the plaintiff by the Chief Police Officer, Perak. (See A. 77 - 78).

14. On the 14th day of July, 1958, the plaintiff lodged his appeal. Since he was uncertain who was at that time the appellate authority he sent copies of his appeal both to the Minister for Defence and the Police Service Commission. On the 29th day of July, 1959 — which was over a year after he had lodged his appeal — he received a letter (see A. 204), emanating from the Secretary of the Police Service Commission, informing him that his appeal had been dismissed.

15. Mr. Jag-Jit Singh's argument on this aspect of the case is that the plaintiff, in breach of the provisions of Article 135(2) of the Constitution, had been dismissed without being given a reasonable opportunity of being heard both (a) before conviction and (b) after conviction and before sentence.

The argument put forward on ground (a) is that copies of various statements made by witnesses and copies of Police documents for which he had asked before his trial as being relevant to his defence were either not supplied to him at all, or supplied too late to give him an adequate opportunity to prepare his defence. Subject to one vitally important qualification, to which I shall later refer, I am satisfied that copies of all documents relevant to his defence were supplied to him, and I find no substance in this contention.

As to ground (b), Mr. Jag-Jit Singh submitted on the authority of the decision of the Privy Council in the case of the *High Commissioner for India* v. *I. M. Lall*[1] that the plaintiff had a right to be heard both at the time when the charges against him were being inquired into by the Adjudicating Officer and after conviction when the question arose as to the proper punishment to be awarded. I accept that as correct. I have already said that I am satisfied that the Adjudicating Officer, after notifying the plaintiff that the case against him on the original charge had been proved, intimated to him sufficiently clearly that in view of the serious nature of the charge he proposed to recommend his dismissal. The plaintiff was then asked if he had anything to say and what he did say was duly recorded by the Adjudicating Officer and forwarded to the Commissioner of Police, in due course, together with the record of the case, for his consideration as to whether or not he should confirm the recommendation for dismissal. In my view that was a sufficient compliance with the requirements of Article 135(2). Mr. Jag-Jit Singh submitted that before the Commissioner of Police confirmed the recommendation for dismissal he should have given the plaintiff a further opportunity to show cause why it should not be confirmed. No doubt the Commissioner of Police could have done so if he was left in any doubt on the facts of the case as to the appropriate punishment to be awarded. But it seems to me that that was a matter entirely for his discretion, and that it was not incumbent upon him to go beyond the plea in mitigation of sentence made by the plaintiff and already on the record before him.

16. But, to my mind, the most serious aspect in the case lies in the fact that the plaintiff, although furnished with copies of the statements made by the witnesses before the Board of Inquiry, was not furnished with a copy of the Findings of that Board. On the other hand, a copy of those Findings was supplied to the Adjudicating Officer before the hearing of the disciplinary charges, and was before him throughout those proceedings. These Findings,

careful and exhaustive as they were, dealt in detail with the evidence of each witness heard by the Board and expressed views as to the credibility of each witness, and the weight to be attached to his statement. In the result they presented a most damning indictment against the plaintiff as an unscrupulous scoundrel who had suborned witnesses, both Police and civilian, to commit perjury and who was "prepared to go to *any* lengths to add to his reputation as a successful investigator". That was the picture presented to the Adjudicating Officer, Mr. Strathairn, by the Findings of the Board of Inquiry before he commenced to hear the charges against the plaintiff. The charges, although relatively trivial at first sight, involved a repetition by these witnesses of the statements they had given before the Board of Inquiry, including the very serious allegations against the plaintiff.

It is an elementary principle of law in criminal cases that, subject to certain exceptions, the bad character or previous convictions of an accused person standing trial on a charge or charges preferred against him shall not be disclosed to the tribunal during the course of his trial on those charges, and an appellate Court will generally interfere and quash a conviction, or order a retrial, in cases where that strict principle has been infringed. The reason for the rule is, of course, that the introduction and inclusion of such evidence may tend to prejudice the tribunal against the accused in the charge or charges then under consideration. In the present case the Adjudicating Officer had before him the unanimous Findings of the Board of Inquiry. Those Findings dealt in detail with precisely the same evidence as would be, and was, called before the Adjudicating Officer on the disciplinary charges to be preferred against the plaintiff, and dealt with the credit and credibility of each witness. It seems to me quite impossible to say that those Findings must not inevitably have prejudiced the mind of the Adjudicating Officer against the plaintiff in relation to the disciplinary charges preferred against him. I do not for a moment suggest that on the evidence that he heard he would not have come to precisely the same finding on the disciplinary charge. But the very fact that he was furnished with, and read, the Findings of the Board must, in my view, to put it at its lowest, have created a very real likelihood that he would have a pre-determined bias or — to use the words of Lord O'Brien C.J., in the case of *R.* v. *Queen's County JJ.*,[2] — "an operative prejudice, whether conscious or unconscious" against the plaintiff in respect of the disciplinary charges upon which he was to adjudicate.

It is, I think, important to consider for a moment Mr. Strathairn's own position at the time he was informed in writing by Mr. Yates on the 12th March, 1958, that he was personally required to act as Adjudicating Officer in the disciplinary charges to be heard against the plaintiff. He had just been appointed to act as Chief Police Officer, Penang, during the absence on leave of the substantive holder of that appointment. Prior to that he had been Officer i/c Criminal Records Office and Police Photographs Branch, Kuala Lumpur. Subsequent to this acting appointment as Chief Police Officer, Penang, he was to take over as Chief Police Officer, Kedah. It was, as I understood him to say, the first disciplinary charge against a Superior Police Officer that he had experienced. The Board of Inquiry consisted of three Senior Police Officers presided over by Mr. Yates, Senior Assistant Commissioner. The letter appointing Mr. Strathairn as Adjudicating Officer and containing certain instructions, and enclosing the Findings of the Board of Inquiry, had been signed by Mr. Yates. I do not for a moment suggest that the proceedings were not conducted by the Adjudicating Officer with the maximum fairness and impartiality nor, I repeat, do I suggest that on the evidence called before him he was not perfectly entitled to find the charges against the plaintiff fully proved and to recommend his dismissal. But the inference appears to me irresistible that his mind must have been seriously prejudiced, whether consciously or unconsciously, against the plaintiff by the most damning Findings that he had before him contained in the unanimous Report of the Board of Inquiry presided over by Mr. Yates. In my view, it was contrary to the fundamental principles of justice which govern a fair trial that the Adjudicating Officer should have had before him, both before and during those disciplinary proceedings, the wholly adverse Report of the Board of Inquiry against the accused person whom he was then trying on those charges.

But the matter does not end there. Whilst the Adjudicating Officer had before him a copy of these Findings, no such copy had been supplied to the plaintiff even though they most materially and injuriously affected him not only in relation to the disciplinary charges which he was then facing, but also as to the matter of sentence upon his conviction on those charges. He had no opportunity to deal with the Findings contained in that Report or to refute or challenge them in any way.

In my view, the furnishing of a copy of the Findings of the Board of Inquiry to the Adjudicating Officer appointed to hear the disciplinary charges, coupled with the fact that no such copy was furnished to the plaintiff, amounted to such a denial of natural justice as to entitle this Court to set aside those proceedings on this ground. It amounted, in my view, to a failure to afford the plaintiff a reasonable opportunity of being heard in answer to the charge preferred against him which resulted in his dismissal. I think it right that I should say, and I stress the fact, that I am entirely satisfied that, in sending a copy of the Findings of the Board of Inquiry to the Adjudicating Officer, there was no intention whatsoever on the part of those responsible to prejudice the mind of the Adjudicating Officer in relation to the charges he was to try. I am fully satisfied that the

Findings, together with the copies of the statements of the witnesses heard by the Board of Inquiry, were sent to the Adjudicating Officer in what was considered to be the normal course of procedure. I would only add that, in view of the very serious Findings by the Board of Inquiry and its clear conclusions that the plaintiff was a thoroughly unscrupulous Police Officer and, by necessary implication, wholly unfit to remain a member of the Federation of Malaya Police Force, it is with the greatest possible regret that I have arrived at my conclusions in this case.

17. There remains one last matter which I should more logically have dealt with at the commencement of this judgment, namely, whether this Court has any jurisdiction to entertain these proceedings in the form in which they are before it, or whether the plaintiff's remedy, if any, is not by way of *certiorari* proceedings.

As Mr. Jag-Jit Singh has pointed out, the plaintiff's Statement of Claim in this case closely approximates the claim of the plaintiff in the case of the *High Commissioner for India* v. *I. M. Lall* already cited. In that case Their Lordships of the Privy Council, by their decision, approved the order of the High Court granting a declaration that the purported dismissal of the plaintiff was wrongful, void, illegal and inoperative and that the plaintiff was still a member of the Indian Civil Service.

In the later case of *N. W. F. Province* v. *Suraj Narain*,[3] the Privy Council again upheld the decision of the Federal Court of India granting a declaration that the dismissal of the plaintiff, a Sub-Inspector of Police, was void and inoperative.

In the case of *Cooper* v. *Wilson*,[4] the plaintiff, a Sergeant in the Liverpool Police Force, claimed a declaration that he had not been validly dismissed from the Force, but that he had duly resigned and was in consequence entitled to be repaid certain moneys that had been deducted from his pay. In considering the argument that, even assuming his dismissal was unauthorised, which was denied, the plaintiff's remedy was to appeal to the Secretary of State, or alternatively, to apply by way of *certiorari* to quash the order of dismissal, Greer L.J. stated in the course of his judgment, at page 321:—

> "It would be idle for a plaintiff who is alleging that he has never been dismissed to appeal to the Secretary of State, nor do I think that the fact that that is a remedy which he could take prohibits his access to the Court for a declaration that his dismissal was invalid, nor do I think that the power which he undoubtedly possessed of obtaining a writ of *certiorari* to quash the order for his dismissal prevents his application to the Court for a declaration as to the invalidity of the order of dismissal".

He then went on to say that the powers of the Court to grant declarations had been greatly extended in recent years.

Again, in the case of *Barnard & Ors.* v. *National Dock Labour Board & Anor.*,[5] the Court of Appeal held that the High Court had the power to make a declaration relating to the validity of the decision of a statutory tribunal. In the course of his judgment Denning L.J. said, at page 1119:—

> "This is not a case of a tribunal which has a lawful jurisdiction and exercises it; it is a case of a man acting as a tribunal when he has no right to do so. These Courts have always had jurisdiction to deal with such a case".

Lastly, I would refer to the case of *Healey* v. *Minister of Health*,[6] where Denning L.J., referring to *Barnard's case* cited above, went on to say, at page 227:—

> "I take it to be clear that the Queen's Courts can grant declarations by which they pronounce on the validity or invalidity of the proceedings of statutory tribunals".

For these reasons I am of the opinion that the plaintiff is entitled to succeed in this action. There must accordingly be a declaration for the plaintiff in the terms as prayed in paragraph (1) of the Prayer in his Statement of Claim, together with an order as prayed that an account be taken of the moneys due to the plaintiff in respect of his salary and all other emoluments found to be due to him as an Inspector of the Federation of Malaya Police Force as from the 7th day of July, 1958, to the date of payment, and an order for such payment to be made of such sum due after the taking of such account. The matter will be remitted to the learned Senior Assistant Registrar for such account to be taken. The defendants must pay the plaintiff's costs of this action.

Judgment for the plaintiff.

CHIA SAU YIN v. LIEW KWEE SAM

[C. A. (Thomson C.J., Syed Sheh Barakbah and Neal JJ.) May 26, 1959]

[K. L. — Civil Appeal No. 59 of 1958]

Partnership — Licensed rubber dealers' business — Whether all partners required to be licensed as rubber dealers.

Rubber Supervision Enactment, 1937 (F.M.S.) ss.5 (i) and 17(i) — Principal object of the Enactment — Interpretation — Revenue law — Breach of.

This is an appeal from a decision of Smith J., reported in [1959] M.L.J. 83.

The basic facts of the case were not in dispute. Before the war one Yap was carrying on business as a rubber dealer under the name of Tong Seng Rubber Company. After the war he resumed business and at all material times had held a licence to purchase rubber under section 5 of the Rubber Supervision Enactment for himself alone trading under the name of Tong Seng Rubber Company. On January 14, 1946, he took in eight other partners, who according to the terms of the partnership agreement were sleeping partners. Accordingly, when it became necessary to apply for renewal of the rubber dealer's licence the first defendant applied in his own name indicating that he was trading as the Rubber Company, but did not disclose the fact that he had eight sleeping partners. This state of affairs